

Practitioner's Docket No. 08695.0048 PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Theodore S. Gorniak, et al

Application No.: 09/971,752

Group No: 3634

Filed: October 4, 2001

Examiner: Robert W. Gibson

For: Push Back Storage Rack System

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
INDICATED IN NOTICE OF ALLOWANCE  
(37 C.F.R. §1.705)**

*Note: 37 C.F.R. § 1.704(e) "Submission of an application for patent term adjustment under §1.705(b) (with or without request under §1.705(c) for reinstatement of reduced patent term adjustment) will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraph (c)(10) of this section."*

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**CERTIFICATE OF UNDER 37 C.F.R. §§1.8(a) and 1.10\***

I hereby certify that on the date shown below this correspondence is being:

**MAILING**

- ☒ deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Box 1450 Alexandria, VA 22313-1450

**FACSIMILE**

- ☐ transmitted by facsimile to the Patent and Trademark Office.

Date August 17, 2004

Patty Eckman  
Signature

Patty Eckman  
(type or print name of person certifying)

NOTE: 37 C.F.R. 1.705:

(a) The Notice of Allowance will include notification of any patent term adjustment under 35 U.S.C. 154(b)  
(b) Any request for reconsideration of the patent term adjustment indicated in the Notice of Allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to Sec. 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the Notice of Allowance.

\*\*\*

(e) The periods set forth in this section are not extendable.

1. This request for reconsideration of the patent term adjustment indicated in the Notice of Allowance mailed on June 28, 2004.

☒ The issue/publication fees are being paid as set forth in the papers attached hereto.

2. Applicant submits herewith a "Statement of the Correct Patent Term Adjustment: Basis(es) Under § 1.702 for the Adjustment - Part B (37 C.F.R. §1.705 (b)(2)(i) and (ii).

3. Any patent granted on this application (37 C.F.R. §1.705(b)(2)(iii):

☒ is not subject to a terminal disclaimer.

☐ is subject to a terminal disclaimer, and the expiration date specified in the terminal disclosure is \_\_\_\_\_(date).

4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in §1.704 (37 C.F.R. §1.705(b)(2)(iv):

☒ there were none (37 C.F.R. 1.705 (b)(2)(iv)(B),

☐ these were as follows (37 C.F.R. §1.705(b)(2)(iv)(A):

5. Also attached hereto is a "Request for Reinstatement for ☐ All and/or ☐ Part of the Period of Adjustment Reduced Pursuant to §1.704(b) - Part C" (37 C.F.R. §1.705(c).

6. The fee set forth in § 1.18(e) (\$200.00) required by 37 C.F.R. §1.705(b)(1) is paid as follows:

☐ Attached is a ☐ check ☐ money order in the amount of \$ \_\_\_\_\_

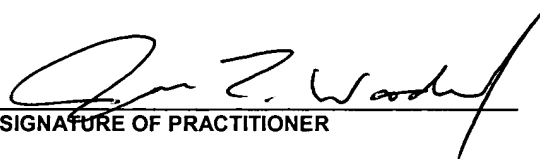
☒ Authorization is hereby made to charge the amount of \$ 200.00

☒ to Deposit Account No. 13-0760

☐ to credit card as shown on the attached credit card information authorization form PTO-2038.

☐ Charge additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

  
SIGNATURE OF PRACTITIONER

Reg. No.: 45,515

Jon L. Woodard, Esq.  
(type or print name of practitioner)

Tel. No.: (814) 870-7664

100 State Street, Suite 700  
P. O. Address

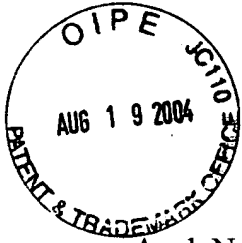
Customer No: 27101

Erie, PA 16507-1498

Attached hereto is/are:

☒ Statement of the Correct Patent Term Adjustment: Basis(es) Under § 1.702 for the Adjustment."  
(37 C.F.R. §1.705(b)(2)(i) and (ii) - Part B

☐ Request for Reinstatement for All and/or Part of the Period of Adjustment Reduced  
Pursuant to §1.704(b) - Part C



**IN THE U.S. PATENT AND TRADEMARK OFFICE**

Appl. No: 09/971,752  
Applicant: Theodore S. Gorniak, et al  
Filed: October 4, 2001  
Title: Push Back Storage Rack System

TC/A.U. 3634  
Examiner: Robert W. Gibson

Docket No: 08695.0048

*Commissioner for Patents*  
*P.O. Box 1450*  
*Alexandria, VA 22313-1450*

**REQUEST FOR RECONSIDERATION OF  
PATENT TERM ADJUSTMENT UNDER RULE 705**

Applicant filed formal U.S. application 09/971,752 on October 4, 2001, taking priority from U.S. Provisional Application 60/237,797 filed on October 4, 2002.

Applicant received a Notice of Missing Parts on November 8, 2001, which confirmed the filing date of the formal application. Applicant properly responded to the Notice of Missing Parts on January 8, 2002. However, a Notice of Abandonment was erroneously mailed on January 21, 2004 citing the applicant's failure to properly reply to the Notice of Missing Parts. A copy of the Notice of Abandonment is attached. On March 12, 2004 the USPTO submitted a withdrawal of the previously sent notice, acknowledging that the Notice of Abandonment mailed on January 21, 2004 was sent in error and thereby withdrawn. A copy of the Withdrawal of Notice of Abandonment is also attached.

A Notice of Allowance was mailed on June 28, 2004. At that time, the applicant also received a determination of patent term adjustment indicating that no adjustment (i.e. an adjustment of zero (0) days) would be made to the term of the patent. A copy of the Notice of Allowance and Fees Due and the Determination of Patent Term Adjustment is attached.

Applicant submits that a period of adjustment of the patent term was warranted under Rule 703 (a)(1) to account for the period, beginning on the day after the date that was 14 months after the date on which the application was filed (12/5/02), and ending on the date of the Notice of Allowance (6/28/04), which is a period of 571 days.

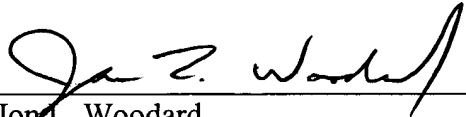
Applicant notes that the Notice of Abandonment incorrectly sent on January 21, 2004 appears to have contributed to this delay entitling applicant to a period of adjustment under Rule 703. Thus, the USPTO did not properly mail at least one notification under 35 U.S.C. §132 or Notice of Allowance under 35 U.S.C. §151, not later than 14 months after the date on which the application was filed under 35 U.S.C. §111A, as required by Rule 702 (a)(1).

The patent that will issue should not be subject to a terminal disclaimer. In accordance with Rule 705 (b)(4)(B), there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth by Rule 704.

For the foregoing reasons, a patent term adjustment of 571 days is hereby requested.

Respectfully submitted,

Date: August 17, 2004

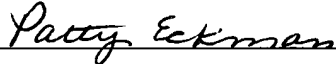
  
Jon L. Woodard  
Reg. No. 45,515  
MacDonald, Illig, Jones & Britton LLP  
100 State Street, Suite 700  
Erie, PA 16507  
(814) 870-7664

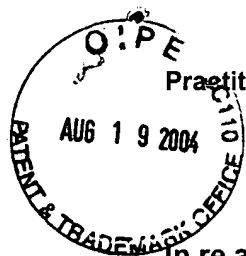
839265

Certificate of Mailing

I hereby certify that this document is being mailed, via U.S. First Class Mail, on the date shown below to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

Date: August 17, 2004

  
Patty Eckman



Practitioner's Docket No. 08695.0048 PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Theodore S. Gorniak, et al

Application No.: 09/971,752                      Group No: 3634  
Filed: October 4, 2001                      Examiner: Robert W. Gibson  
For: Push Back Storage Rack System

*Commissioner for Patents*  
*P. O. Box 1450*  
*Alexandria, VA 22313-1450*

**STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT:  
BASIS(ES) UNDER § 1.702 FOR THE ADJUSTMENT  
(37 C.F.R. §1.705(b)(2)(i) and (ii))**

1. This statement is being submitted in support of the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE" to which this statement is attached.

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**CERTIFICATION UNDER 37 C.F.R. §§1.8(a) and 1.10\***

I hereby certify that on the date shown below this correspondence is being:

**MAILING**

- ☒ deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Box 1450 Alexandria, VA 22313-1450

**FACSIMILE**

- ☐ transmitted by facsimile to the Patent and Trademark Office.

Date August 17, 2004

Patty Eckman  
Signature

Patty Eckman  
(type or print name of person certifying)

**37 C.F.R. § 1.705(b)(2)(i)**

2. The patent term adjustment shown on the Notice of Allowance is:

0

It is respectfully suggested that the correct patent term adjustment under § 1.702 is:

571 days

**37 C.F.R. § 1.705(b)(2)(ii)**

*Note: Under § 1.705(b)(2)(ii) applicant must set forth "The relevant dates as specified in §1.703(a) through (e) for which an adjustment is sought and the adjustment is specified in §1.703(f) to which the patent is entitled."*

3. The basis(es) on which applicant seeks adjustment are as follows:

Adjustment is sought for the following date: June 28, 2004 (date of Notice of Allowance)

Adjustment to be made for this date: : December 4, 2003 (14 month deadline for the USPTO to send the Notice of Allowance under Rule 702).

Basis: Contrary to Rule 702(a)(1), the Office failed to mail to the applicant at least one notification under 35 U.S.C. 132 of a Notice of Allowance under 35 U.S.C. 151 no later than the fourteen (14) months after the date on which the application was filed under 35 U.S.C. 111(a). An explanation of this failure is included in the Request for Reconsideration of Patent Term Adjustment Under Rule 705 that is included with these papers.

☒ Plus 2 additional page(s).

  
SIGNATURE OF PRACTITIONER

Reg. No.: 45,515

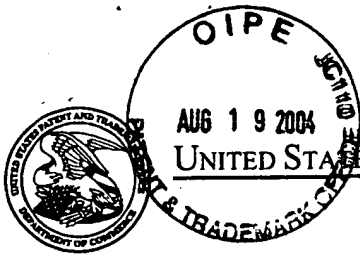
Jon L. Woodard, Esq.  
(type or print name of practitioner)

Tel. No.: (814) 870-7664

100 State Street, Suite 700  
P. O. Address

Customer No: 27101

Erie, PA 16507-1498



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
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www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,752	10/04/2001	Theodore S. Gorniak	08695.0048	4243

7590 06/28/2004

Edward W. Goebel, Jr.  
Suite 700  
100 State Street  
Erie, PA 16507-1498

EXAMINER

GIBSON, ROBERT W

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 06/28/2004

**Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)**  
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.





UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
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 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NUMBER	FILING OR 37(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/971,752	10/04/2001	Theodore S. Gorniak	08695.0048

CONFIRMATION NO. 4243

ABANDONMENT/TERMINATION  
LETTER

\*OC000000011732793\*

Edward W. Goebel, Jr.  
 Suite 700  
 100 State Street  
 Erie, PA 16507-1498

Date Mailed: 01/21/2004

### NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 11/08/2001.

- No reply was received.

A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

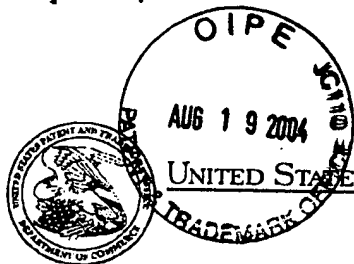
Any questions concerning petitions to revive should be directed to the "Office of Petitions" at (703) 305-9282. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

*A copy of this notice MUST be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



UNITED STATES PATENT AND TRADEMARK OFFICE

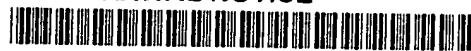
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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/971,752		Theodore S. Gorniak	08695.0048

Edward W. Goebel, Jr.  
 Suite 700  
 100 State Street  
 Erie, PA 16507-1498

CONFIRMATION NO. 4243

## WITHDRAWAL NOTICE



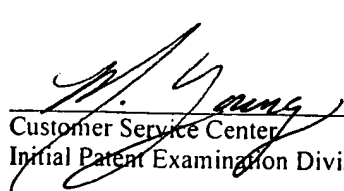
\*OC000000012091526\*

Date Mailed: 03/12/2004

## WITHDRAWAL OF PREVIOUSLY SENT NOTICE

The Notice of Abandonment mailed on 01/21/2004 was sent in error and is hereby withdrawn. A Filing Receipt is enclosed. The Office regrets any inconvenience the error may have caused.

*A copy of this notice MUST be returned with the reply.*

  
 Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY